United States Court of Appeals

for the Second Circuit

APPENDIX

75-7436

B

P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

Connecticut State Federation of Teachers, AFL-CIO, LOCALS
Appellant

Vs.

BOARD OF EDUCATION
Members of the Towns of Hamden, Stratford, Bridgeport, Bloomfield and Westport, et al
Appellees

Docket No. 75-7436

Joint Appendix

Filed by:

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4

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont'd.)

Relevant Docket Entries (Contd.)

DATE	PROCEEDINGS
9/3/74	Answer and Special Defenses of Board of Education Members of the Town of Westport, filed.
9/6/74	Answer and Special Defenses of Board of Education Members of the Town of Bloomfield, filed.
9/25/74	Answer and Special Defenses of Board of Education Members of the Town of Hamden, filed.
11/5/74	Plaintiffs' Motion for Summary Judgment, filed
1/14/75	Defendant's (Members of the Stratford Board of Education) Motion For Summary Judgment, filed.
3/5/75	Defendants' Motion for Summary Judgment, filed by Deft. Education Associations.
4/30/75	Stipulation for Dismissal of Action against Meriden Board of Education Members only, endorsed: "So ordered" ZAMPANO, J. M-5/1/75. Copies to counsel of record.

Relevant Docket Entries (Contd.)

DATE	PROCEEDINGS
7/2/75	Ruling on Motions For Summary Judgment, filed and entered. Plaintiffs' motion for summary judgment is denied; defendant CEA affiliates' motion for summary judgment is granted; the motion for summary judgment of the members of the Stratford Board of Education is also granted. Zampano, J. M-7/3/75 Copies to all counsel of record and to TEC, MJB, RCZ, JON, AHL, U. Conn. Law Review.
7/7/75	Judgment, filed and entered. Ordered that pltfs.' motion for summary judgment is denied; deft. CEA affiliates' motion for summary judgment is granted; the motion for summary judgment of the members of the Stratford Board of Educ. is also granted. Markowski, C. M-7/9/75. Copies to all counsel of record.
7/21/75	Plaintiffs' Notice of Appeal from judgment entered on July 7, 1975, filed. Copies to all counsel of record.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS, AFT, AFL-CIO, LOCALS Hamden #804 and Anthony Russo President Meriden #1478 and Thomas E. Bruenn President Stratford #1531 and Ralph Bigletti President Bridgeport #2035 and Maury Guberman President Bloomfield #2271 and Anthony Feola Acting President Westport #3171 and E. G. Lee Wall, President VS. BOARD OF EDUCATION MEMBERS OF THE TOWNS OF Hamden, Meriden, Stratford, Bridgeport, Bloomfield, and Westport and CONNECTICUT EDUCATION ASSOCIATION affiliates of Hamden, Meriden, Stratford, Bridgeport, Bloomfield and Westport	)	CIVIL ACTION NO. COMPLAINT

1. This is an action to redress the deprivation under color of §10-220 Conn. Gen. Stats. of free speech, free association and equal protection rights secured to the organizational and individual plaintiffs and to teachers employed in the towns where the plaintiff organizations are located, which rights are secured to them by the First and Fourteenth Amendments to the Constitution of the United States. Jurisdiction arises from a) 42 U.S.C. §1983 and 28 U.S.C. §1343, and also b) 28 U.S.C. §1331(a) because this action arises under the Constitution of the United States and the matter in controversy exceeds the sum or value of $10,000.

2. The organizational Plaintiffs are local chapters of the Connecticut State Federation of Teachers, organized pursuant to §10-153b Conn. Gen. Stats. for the purpose of representing teachers in negotiations with boards of education in the various towns named in the caption. The individual Plaintiffs are the presidents of the respective organizational Plaintiffs and bring this action in their official and individual capacities. All Plaintiffs herein seek vindication of their own rights, and the rights of teachers employed in the respective towns.

3. Defendants include the members of the respective boards of education in each town where the Plaintiff organizations exist; such boards are agencies of the State charged with the responsibility of providing education in their towns; the actions of the members as alleged in this complaint came in the official capacity of each and while each was exercising powers conferred by §10-220 Conn. Gen. Stats.; they are herein described by title only pursuant to Rule 25(d)(2) Fed. R. Civ. Proc.

4. Defendants include also the affiliate in each such town of the Connecticut Education Association organized pursuant to §10-153b Conn. Gen. Stats. for the purpose of representing teachers in negotiations with the respective boards of education; in each such town the Connecticut Education Association affiliate is presently the recognized bargaining agent.

5. The individual teachers of the various towns where the Plaintiff organizations are located possess the right to speak on issues of public importance and to communicate with each other on matters of organizational interest or business, which fundamental rights are guaranteed to them by the First Amendment to the Constitution of the United States as made applicable to the

states by the Fourteenth Amendment and which rights may not be denied to them in the absence of a showing of material and substantial disruption of the work and discipline of the school. The policies and practices alleged in ¶8 below infringe upon these rights.

6. The individual teachers of the various towns where the Plaintiff organizations are located possess the right to associate together for the achievement of lawful purposes, which fundamental right is guaranteed to them by the First Amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment, and which right may not be denied to them in the absence of a showing of material and substantial disruption of the work and discipline of the school. The policies and practices alleged in ¶8 below infringe upon these rights.

7. The various policies and practices of the Defendant Board Members alleged in ¶8 below discriminate between the Plaintiff organizations and the rival Connecticut Education Association affiliates in a fashion which infringes the constitutionally recognized fundamental rights of the Plaintiff organizations as identified in ¶5 and ¶6 above. Such discriminations do not survive a test of strict scrutiny, (i.e. are unnecessary to promote any compelling state interest) and they deny to the Plaintiff organizations equal protection of the law as guaranteed to them by the Fourteenth Amendment.

8. The specific policies and practices of the various Defendant Board Members are as follows:

(a) Hamden - The Superintendent on behalf of the Defendant Board/is enforcing the following policy:

School mailboxes are to be used for school business only.

The bargaining agent can use faculty mailboxes at any time during the year.

Groups other than the bargaining agent may use mailboxes for membership recruitment purposes during the period from September 1 through November 30.

Bulletin board space is provided only for the official bargaining agent.

Use of the school building after school for meeting purposes is available to the official bargaining agent. Other groups may apply for such use through Mr. Carusone.

(b) Meriden - By contract between the Meriden Board of Education and the Meriden Education Association currently in effect, the Defendant Board/agreed to the following provisions and are now enforcing them to the exclusion of the Plaintiff organization:

ARTICLE V
ASSOCIATION RIGHTS

5.2 The Association shall be accorded the use of building mail facilities and inter-school mail privileges for the express purpose of distribution of the organization's communications.

5.3 The Association shall have the use of bulletin board space at an accessible place in each school building for Association notices. Copies of such notices shall be given to the Principal and to the Superintendent.

(c) Stratford - By agreement between the Stratford Board of Education and the Stratford Education Association currently in effect, the Defendant Board/agreed to the following provisions and are now enforcing them to the exclusion of the Plaintiff organization:

ARTICLE XXVI
DUES DEDUCTION

A. The Board agrees to deduct from teachers' salaries dues for the Stratford Education Association, The Connecticut Education Association, and the National Education Association, and to transmit All such monies promptly to the Stratford Education Association. Teacher authorizations shall be in writing....

D. Any teacher desiring to have the Board discontinue deductions he has previously authorized must notify the Board and the Association concerned in writing by September 20 of each year for that school year's dues.

(d) Bridgeport - By contract between the Bridgeport Board of Education and the Bridgeport Education Association currently in effect, the Defendant Board Members agreed to the following provisions and are now enforcing them to the exclusion of the Plaintiff organization:

L. Payroll Deductions

All of the following deductions are subject to the capabilities of the computer.

1. In addition to those payroll deductions required by law the following agencies are eligible for payroll deductions. All requests for deductions must be in writing on approved authorization forms.

2. A list of approved deductions is as follows:

Washington National Insurance
Bridgeport National Insurance Co. Annuity
Connecticut Education Association
National Education Association
Tax Sheltered Annity Plans (3)
U.S. Savings Bonds....

3. d. Payroll authorizations for Association dues shall be in full force and effect for so long as a teacher continues in the employ of the Board, but no longer than the duration of this Agreement. The Association agrees to indemnify, defend and hold the Board harmless for any action that might arise against the Board for compliance with dues deductions provisions of this Agreement.

(e) Bloomfield - By contract between the Bloomfield Board of Education and the Bloomfield Education Association currently in effect, the Defendant Board agreed to the following provisions and are now enforcing them to the exclusion of the Plaintiff organization:

ARTICLE V
DUES DEDUCTION

A. The Board agrees to deduct from the salaries of its employees dues for the Bloomfield Education Association, Connecticut Education Association, and any other Board and teacher approved deductions as said employees individually and voluntarily authorize in writing to the Board to deduct, and to remit the monies monthly as they are deducted beginning with the first deduction to the designated Association, or Agency.

Further in administering its dues deduction policies said Defendant refuses to honor changes in authorization unless made thirty (30) days before the start of the school year.

(f) Westport - By contract between the Westport Board of Education and the Westport Education Association currently in effect, the Defendant Board agreed to the following provisions and are now enforcing them to the exclusion of the Plaintiff organization:

Article XXII - DUES DEDUCTION

The Board of Education agrees, upon the voluntary written request from any certified employee submitted on a form approved by the Board, to deduct from that employee's salary dues for the Westport Education Association, Inc., the Connecticut Education Association, and/or the National Education Association, and to transmit such monies so deducted at a time to be agreed upon between the Board and the Association, to the Westport Education Association, Inc. It is specifically understood and agreed that any such dues deduction is voluntary for any employee, that The Board shall be liable only for monies actually deducted from any individual's salary, and that once such monies are transmitted to the Westport Education Association, Inc., that Association shall save the Board harmless from any and all claims which may arise as a result of such dues deductions.

Further, said Defendants do not allow the Plaintiff organization to have access to mail boxes, bulletin boards or school facilities.

WHEREFORE, the Plaintiffs request as relief:

(a) A declaratory judgment adjudging that each of the policies and practices alleged in ¶8 above is unconstitutional; and

(b) An injunction against implementation of each of said policies and practices.

Dated at Hartford, Connecticut, this 7th day of May, 1974.

Plaintiffs

By Karl Fleischmann
Karl Fleischmann
Satter, Fleischmann & Sherbacow

We hereby enter our appearance for the Plaintiffs in the above entitled action.

Karl Fleischmann

Karl Fleischmann
Satter, Fleischmann & Sherbacow
60 Washington Street
Hartford, Connecticut 06106

Tel: 547-0120 May 7, 1974

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS, LOCALS	)	CIVIL NO. B-74-178
VS.	)	
BOARD OF EDUCATION MEMBERS, ET AL	)	

ANSWER AND SPECIAL DEFENSE

The Defendants, Hamden Education Association, Meriden Education Association, Stratford Education Association, Bridgeport Education Association, Bloomfield Education Association and Westport Education Association, hereby answer the Complaint in the above captioned action as follows:

1. Deny the allegations in paragraph 1.

2. Admit the allegations in paragraph 4.

3. Admit the allegations in paragraph 5, except deny the allegation that the policies and practices alleged in paragraph 8 of the complaint infringe upon those rights.

4. Admit the allegations in paragraph 6 except deny the allegation that the policies and practices alleged in paragraph 8 of the complaint infringe upon those rights.

5. Deny the allegations in paragraph 7.

6. Admit the allegations in paragraph 8, except that as to (c), Article D is not quoted in full; and as to (d), Article L.2, the name Bridgeport National Insurance should be Bridgeport Education Association.

7. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 2 and 3 and leave the Plaintiffs to their proof.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Upon information and belief, various locals of the Connecticut State Federation of Teachers, AFT, AFL-CIO have negotiated contract provisions and/or practices and policies substantially similar to the ones complained of in this action, and therefore the Plaintiffs come to the court with unclean hands.

THIRD AFFIRMATIVE DEFENSE

1. Inasmuch as previous contracts and/or practices and policies contained these same provisions, the plaintiffs were guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against these defendants.

2. Such laches and unreasonable delay were without good cause and substantially predjudiced these defendants in that had the matter been brought up in prior years and decided in favor of the plaintiffs, the subject matter of these provisions could have been altered, if necessary, by negotiations between the boards involved and the bargaining representative in an orderly and proper fashion.

3. Upon information and belief, the plaintiffs are now or may be in the near future, mounting an election campaign in each of the towns named in the complaint, and this action is brought at this time in attempt to secure publicity and advantage to the plaintiffs in the forthcoming elections.

4. The plaintiffs action is and ought to be barred by reason of their laches.

FOURTH SPECIAL DEFENSE

1. The contracts between the various parties named herein contain grievance procedures, designed to secure resolutions of contract disputes.

2. The plaintiffs have made no attempt to utilize said grievance procedures, and therefore have failed to exhaust their administrative remedies.

Dated at Hartford, Connecticut, this 19th day of August, 1974.

DEFENDANTS, Hamden Education Association,
Meriden Education Association,
Stratford, Education Association,
Bridgeport Education Association,
Bloomfield Education Association and
Westport Education Association

By _____
Martin A. Gould
Gould, Killian & Krechevsky
37 Lewis Street
Hartford, Connecticut

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS ET AL	CIVIL ACTION NO. B-74-178
VS.	
BOARD OF EDUCATION MEMBERS ET AL	PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

In accordance with Rule 56, Fed. R. Civ. Proc., the Plaintiffs claim that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.

Dated at Hartford, Conn., this 1st day of November, 1974.

Plaintiffs

By Karl Fleischmann
Karl Fleischmann, Partner
Satter, Fleischmann & Sherbacow

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS ET AL	)	CIVIL ACTION NO. B-74-178
VS.	)	CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
BOARD OF EDUCATION MEMBERS ET AL	)	

In support of their motion for summary judgment, and in accordance with Rule 10(a)(3) of the Local Rules of this District, the Plaintiffs contend as follows:

The issue posed by this case is whether or not certain contract provisions contained in the teacher's contracts of various towns relating to the distribution of materials by teacher organizations and relating to dues deductions are unconstitutional.

The allegations of paragraphs 1, 5, 6 and 7 of the complaint raise only questions of law.

The allegations of paragraphs 2, 3 and 4 are either admitted by the Defendants or not contested by them and are susceptible to affidavit evidence.

Paragraph 8 of the complaint alleges the text of the contract provisions in question and the various Defendants have admitted the existence of the provisions applicable to their respective towns.

Dated at Hartford, Conn., this 1st day of November, 1974.

Plaintiffs

By _____
Karl Fleischmann, Partner
Satter, Fleischmann & Sherbacow

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS ET AL	CIVIL ACTION NO. B-74-178
vs.	
BOARD OF EDUCATION MEMBERS ET AL	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

In accordance with Rule 56, Fed. R. Civ. Proc., the Defendants claim that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.

Dated at Hartford, Conn., this 3rd day of March, 1975.

DEFENDANT EDUCATION ASSOCIATIONS

By _____
Martin A. Gould
Gould, Killian & Krechevsky

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS ET AL	CIVIL ACTION NO. B-74-178
VS.	STIPULATION FOR DISMISSAL OF ACTION AGAINST MERIDEN BOARD OF EDUCATION MEMBERS
BOARD OF EDUCATION MEMBERS ET AL	

The Plaintiff and the Defendants, Meriden Board of Education Members, stipulate as follows:

1. On April 1, 1975 the Meriden Board of Education adopted the following policy:

> "Teacher organizations shall be accorded the use of building mail facilities and interschool mail privileges for the express purpose of distribution of the organizations' communications.
>
> "This policy shall remain in effect as long as Article V, Section 5.2 of the Agreement between the Meriden Education Association and the Meriden Board of Education remains in effect as presently worded."

2. The adoption of this policy moots the issues raised by ¶8(b) of the complaint.

3. In accordance with Rule 41(a)(2) Fed. Rules of Civ. Proc., the Plaintiff and the Defendants, Meriden Board of Educatio Members, move the Court to dismiss the action as against said Defendants only, and stipulate that such dismissal be without costs to either party.

Dated at Hartford, Conn., this 4th day of April, 1975.

So Ordered
R.C. Zampano
U.S.D.J.

By

ORDERED ACCORDINGLY,
By the Court,

SYLVESTER A. MARKOWSKI, Clerk

By: _____ Deputy In Charge

Plaintiff

By Karl Fleischmann
Karl Fleischmann, Partner
Satter, Fleischmann & Sherbacow

Defendants
Meriden Board of Education Members

By _____
Morton H. Greenblatt
Assistant Corporation Counsel

SATTER, FLEISCHMANN & SHERBACOW
ATTORNEYS AT LAW
80 WASHINGTON ST.
HARTFORD, CONN.

II. VARIOUS LOCAL CHAPTERS OF THE CONNECTICUT STATE FEDERATION OF TEACHERS, AFT, AFL-CIO HAVE NEGOTIATED CONTRACT PROVISIONS SUBSTANTIALLY SIMILAR TO THOSE COMPLAINED OF IN THIS ACTION, AND THEREFORE THE PLAINTIFFS COME TO THIS COURT WITH UNCLEAN HANDS.

The Stipulation dated February 10, 1975 by and between the plaintiffs and the Defendant Associations contain provisions of contract clauses in eleven towns negotiated by local chapters of the Federation which are substantially similar to the clauses here in question.

Pursuant to Fed. R. Civ. Proc. Rule 8 (c) (2), the Defendants have raised the equitable defense of unclean hands.

It is a Basic proposition of law that one who comes into equity must come with clean hands. Manufacturers Finance Co. v. McKey, 294 U.S. 442, 79 L. Ed. 982, 55 S. Ct. 444 (1934); Carron v. Fox Film Corp., 269 F. 928 (2d Cir. 1920), cert. den. 255 U.S. 569, 65 L. Ed. 790, 41 S. Ct. 323. One who institutes an action to complain of a wrong on the part of the defendant cannot be accorded relief if he has committed the same wrong. International News Service v. Associated Press, 248 U.S. 215, 63 L. Ed 211, 39 S. Ct. 68 (1918); Manhattan Medicine Co. v. Wood, 108 U.S. 218, 27 L. Ed. 706, 2 S. Ct. 436 (1882).

It is submitted that the plaintiffs herein find themselves in just this position. While the Federation locals in eleven towns negotiate and utilize just such clauses as are here complained of, the Federation here attempts to secure an injunction against the implementation of these same clauses by Association locals. The case of Edward Thompson Co. v. American Law Book Co., 122 F. 922 (2d. Cir. 1903), although it involved a question of copyright infringement, is instructive. The court there stated that: "...if the defendant is an infringer, so is the complainant, for their methods in examining the authorities cited in prior copyrighted works are substantially identical." Id. at 925. "... equity will refuse to aid a suitor who has himself been guilty of the same inequitable conduct which he denounces in others..." Id at 926.

The plaintiffs here have sought a declaratory judgment and an injunction. The injunction is clearly equitable in nature and as such is not available to one who comes into court with unclean hands. Cannon v. Fox Film Corp., 269 F. 923 (2nd Cir. 1920). It is submitted that even if this court should decide that the doctrine of unclean hands does not apply to actions for declaratory judgments, this court should not issue a declaratory judgment which it would decline to enforce by injunction. See 28 U.S.C. 2202. Such a decree would be, in effect, a nullity.

The defendants contend that in as much as the Federation has engaged in other towns in the exact conduct of which it complains in the towns here involved, it should be barred from relief herein.

PLAINTIFFS' REPLY BRIEF

There has been No Showing of Bad Faith which Would Justify Barring the Plaintiffs Under the Clean Hands Doctrine, and Moreover the Doctrine is Inapplicable to a Suit Seeking a Declaratory Judgment Upon a Disputed and Significant Constitutional Claim.

In its brief and oral argument the CEA has made the claim that the Stipulation of February 10, 1975 shows 11 clauses negotiated by Federation locals which are "substantially similar" to the clauses which the Plaintiffs challenge here. This is factually inaccurate as we shall demonstrate.

Moreover, the Plaintiffs do not pursue an equitable remedy, having abandoned the request for injunction (Plaintiffs' Brief page 9) and are pursuing only a claim for declaratory judgment. The equitable defense of unclean hands is particularly unpersuasive where the purpose of the suit is to secure a clarification of disputed constitutional issues.

In short, neither the Plaintiffs nor the Defendants are to be censured for the negotiation of clauses favorable to themselves at a time when no one could be sure whether such clauses were constitutional. The Plaintiffs, the Defendants, and the public have an interest in the resolution of the constitutional issues by declaratory judgment for the future guidance of all concerned.

We turn first to a town-by-town refutation of the exaggerated claim that the Federation has repeatedly negotiated clauses as offensive as the ones here challenged.

ANSONIA -- While Article 6 of the Contract guarantees that the Federation local shall have certain bulletin boards for its exclusive use, it nowhere appears that the Association affiliate is denied bulletin board space. The payroll deduction clause is on its face non-discriminatory: the contract assures deduction for dues to any "professional organizations."

BOZRAH -- There is no restriction on the use of school communication facilities by the Association, although the dues deduction clause appears partial to the Federation.

CLINTON -- There is a non-discriminatory bulletin board clause and a payroll deduction clause which specifically approves deduction for both the Federation and the Assocation.

COLCHESTER There is no restriction on the use of school communication facilities by the Association and the payroll deduction is non-discriminatory, covering deductions for all "professional organizations."

COVENTRY - The Federation is guaranteed both bulletin board and mailbox access but no prohibition appears against granting such access to the Association. The dues deduction clause is non-discriminatory.

FRANKLIN -- There is a guarantee of Federation access to the mailboxes but no exclusion of others, and the use of other school facilities is guaranteed on an equal basis for all organizations. Dues deduction is not covered. (Counsel believes the CEA has no members in Franklin.)

HARTFORD -- The bulletin board clause here is apparently improper and the dues deduction clause is limited to the Federation.

LISBON -- The academic freedom clause here is subject to no criticism whatever. No attempt is made to limit the use of communications nor to secure exclusive dues deduction.

NEW BRITAIN -- There is a guarrantee of bulletin board space to the Federation but no evidence that this or any other communication facility is denied the Association. Availability of the school mailboxes is expressly guaranteed to all organizations. Dues deduction is assured for the Federation.

NEW HAVEN -- Bulletin boards, mailboxes and school meeting facilities are assured for the Federation but there is no evidence that they are denied to others. Dues deduction is assured to the Federation. (Counsel believes CEA postings and mailbox use are in fact permitted.)
(Moreover, CEA dues are in fact deducted as a matter of practice.)

SHERMAN -- The Federation is assured the use of school facilities but there is no prohibition on any one else using them. Dues deduction is not covered.

SOMERS -- The Federation is assured of bulletin board space and dues deduction.

WEST HAVEN - While the Federation is alone assured bulletin board space, mailbox space is guaranteed to all. The Federation alone has guaranteed dues deduction privileges. (Counsel believes the CEA in fact uses the bulletin boards.)

Certainly these clauses do not reflect any single philosophy. A number reflect a positive recognition of the desirability of open communication (e.g. Clinton, Lisbon, New Britain) while some attempt to gain an advantage for the majority organization. Some of the dues deduction clauses were negotiated for the benefit of all teacher organizations (e.g. Ansonia, Clinton, Colchester, Coventry) while some were intended to benefit the Federation (e.g. Hartford, West Haven). It is not possible to conclude that the Plaintiff locals share any particular set of values with these eleven other locals, nor legally proper to tar them with a brush which is only spottily laden.

The constitutional propriety of preferential clauses is under heated dispute in the present case, and the Plaintiffs can not be characterized as lacking in good faith because some of

their locals believed themselves constitutionally entitled to negotiate preferential clauses. Good faith is a proper defense in a §1983 action, Arroyo v. Walsh, 317 F.Supp. 869, 872 (D.C. Conn. 1970). An honest belief of the propriety of the wrongful act will preclude the operation of the clean hands doctrine. Barrett v. Carter, 39 Ill. App. 2d 400, 188 N.E.2d 736 (1963); Mathis v. Yarak, 71 NJ Super 234, 176 A.2d 794 (1961); Vangel v. Vangel, 116 Cal App. 2d 615, 254 P.2d 919 (1953) and Townsend v. Morgan, 192 Md 168, 63 A.2d 743 (1949). In Brous v. Town of Hempstead, 69 N.Y.S.2d 258, 272 App. Div. 31 (1947) amended 70 N.Y.S.2d 576, 272 App. Div. 777 (1947) the Court considered a suit for declaratory judgment as to the constitutionality of the Hempstead zoning ordinance. The Plaintiff had constructed a group of cabanas on his property after the building official and zoning board of appeals had denied him a building permit. The Court rejected the claim that the clean hands doctrine barred him, reasoning that so long as a genuine controversy existed which placed in doubt his right to construct the cabanas, he was acting in good faith when he built believing what he did to be constitutional. This same principle applies here.

The clean hands doctrine is peculiarly an equitable doctrine resting on the proposition that when one seeks the special consideration of the court and the peculiar powers of equity he should demonstrate himself to be worthy in all respects. This doctrine may be invoked "only to prevent affirmative equitable relief" and not as a bar to legal remedies, 30 CJS Equity §93, Page 1009,

Merchants Indem. Corp. v. Eggleston, 37 NJ 114, 179 A.2d 505 (1962); Riley v. Davidson, (Tex Civ. App.) 196 SW2d (1946). Suits for declaratory relief should on principle be excluded from the operation of the doctrine: a party who comes to court seeking only guidance should be able to get it. He may, after all, want advice on how to wash his hands.

Finally, there is a strong public interest in having this matter resolved which overbalnces any weight which the clean hands defense may have, Kovach v. Maddux, 238 F.Supp. 835, 845 (MD Tenn. 1965); Toomer v. Witsell, 73 F.Supp. 371, 374 (ED SC 1947) aff'd. in pertinent part 334 U.S. 385, 393 (1947). Boards and teachers in towns throughout the state will know how to conduct themselves with constitutional propriety on the matters here in issue if and only if the Court speaks to the merits.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS ET AL	)	CIVIL ACTION NO. H-74-179
VS.	)	
BOARD OF EDUCATION MEMBERS ET AL	)	DEFENDANTS' REPLY IN REBUTTAL

I. VARIOUS LOCAL CHAPTERS OF THE CONNECTICUT STATE FEDERATION OF TEACHERS, AFT, AFL-CIO HAVE NEGOTIATED CONTRACT PROVISIONS SUBSTANTIALLY SIMILAR TO THOSE COMPLAINED OF IN THIS ACTION, AND THEREFORE THE PLAINTIFFS COME TO THIS COURT WITH UNCLEAN HANDS.

The plaintiffs in their brief have sought to analyze certain Federation clauses in an attempt to show that not all Federation Contracts have all of the deficiencies attributed to the various clauses in issue in the case at bar.

Counsel for the plaintiffs has inserted in various places his "beliefs" as to matters of evidence, a practice which is clearly improper; and the defendant requests the court to disregard this attempted "proof".

There has never been any allegation that all of the Federation clauses are similar to the clauses here in question; but enough similarity is apparent to warrant a denial of relief to the Federation in the case at bar.

The plaintiffs ask this court to assume that the Federation Locals entered into these contracts in a good faith belief in the propriety of this type of clause. It is submitted that in the absence of proof, this court cannot infer good faith where the Federation so insistently argues the constitutional deprivations caused by the clauses in the case at bar.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS, ET AL. :

v. : CIVIL NO. B 74-178

BOARD OF EDUCATION MEMBERS OF THE TOWNS OF HAMDEN, MERIDEN, STRATFORD, BRIDGEPORT, BLOOMFIELD, AND WESTPORT, ET AL. :

RULING ON MOTIONS FOR SUMMARY JUDGMENT

The Connecticut State Federation of Teachers (CSFT) and the Connecticut Education Association (CEA) are rival labor organizations for teachers in the State of Connecticut. In the five towns of Hamden, Westport, Stratford, Bridgeport, and Bloomfield, the teachers have designated the CEA affiliate as their exclusive collective bargaining agent pursuant to the Connecticut Teacher Negotiations Act, Conn. Gen. Stat. §§ 10-153a et seq.; and, the teachers have entered into a collective bargaining agreement with the respective town Boards of Education. In these five towns, the CSFT is the minority union. Dissatisfied with the present arrangement, the CSFT locals, together with each affiliate's president, commenced this civil rights action for declaratory relief against the members of the town Boards of Education and the rival CEA affiliates, claiming that the collective bargaining agreements entered into by the five pairs of defendants

infringe plaintiffs' First and Fourteenth Amendment rights.[1/] In issue are two types of contractual provisions. In Hamden and Westport, regulations deny or limit the access of the CSFT affiliate to school bulletin boards and teachers' mailboxes, while affording the CEA bargaining agent such access. In Stratford, Bridgeport, Bloomfield, and Westport, contract provisions grant the CEA affiliate a dues "check-off" privilege,[2/] while denying the CSFT affiliate a similar privilege. These two types of provisions are said to deprive the plaintiffs of rights to freedom of speech, freedom of association, and the equal protection of the laws.

Presently before the Court are motions for summary judgment filed by the plaintiffs, the defendant CEA affiliates, and the members of the Board of Education of the Town of Stratford. The parties agree that there is no genuine issue of material fact and submit the case upon the briefs and oral argument.

1/ The complaint alleges similar claims against the CEA affiliate and the Board of Education of the Town of Meriden. On April 4, 1975, a stipulation for the dismissal of the Meriden Board of Education was filed, reciting that the Board had changed its policy to comport with plaintiffs' desires. The Meriden Board of Education having been dismissed on these grounds, the claims against the Meriden CEA affiliate are moot.

2/ A dues "check-off" is the practice whereby the Board of Education deducts the amount of a teacher's union dues from his pay and remits it directly to the affiliate. In each of the four towns invqlved here, money may be deducted for union dues only upon express authorization by the teacher.

In opposing the plaintiffs' claims, defendants have argued that the plaintiffs must exhaust their administrative remedies and that the plaintiffs have "unclean hands" because CSFT affiliates have negotiated similar exclusive privileges in towns where they are the recognized bargaining agent. The Court sees no reason to discuss the niceties of these defenses or to engage in an extensive analysis of the merits of plaintiffs' constitutional arguments.[3/] Claims identical to those made by the plaintiffs were rejected in a scholarly opinion by Chief Judge Arraj of the District of Colorado in Local 858 of the American Federation of Teachers v. School District No. 1 in the County of Denver, 314 F.Supp. 1069 (D.Colo. 1970). Accord: Federation of Delaware Teachers v. De La Warr Board of Education, 335 F.Supp. 385 (D.Del. 1971); Clark County Classroom Teachers Ass'n v. Clark County School District, No. 7894 (Nev. Sup. Ct. March 12, 1975). The Supreme Court has long approved the grant of exclusive rights to a labor organization that has been elected the collective bargaining representative. N.L.R.B. v. Jones & Loughlin Steel Corp., 301 U.S. 1, 44 (1937); see N.L.R.B. v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967). An exclusive dues check-off

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3/ A proper concern over its jurisdiction does require the Court to note its doubts whether the organizational plaintiffs have standing to sue under the Civil Rights Act, 42 U.S.C. § 1983. Cf. Aguayo v. Richardson, 473 F. 2d 1090, 1099-1100 (2 Cir. 1973), cert. denied, 414 U.S. 1146 (1974). These doubts need not be resolved, however, because the adjudication of the individual plaintiffs' claims requires the Court to reach the merits.

system has been upheld. Bauch v. City of New York, 21 N.Y. 2d 599, 237 N.E. 2d 211, cert. denied, 393 U.S. 834 (1968). The plaintiffs neither cite a case nor advance any convincing argument which would move this Court to depart from the reasoning and rulings of these persuasive authorities.

Accordingly, plaintiffs' motion for summary judgment is denied; defendant CEA affiliates' motion for summary judgment is granted; the motion for summary judgment of the members of the Stratford Board of Education is also granted.

Dated at New Haven, Connecticut, this 30th day of June, 1975.

Robert C. Zampano
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CONNECTICUT STATE FEDERATION OF TEACHERS, ET AL	:	
V.	:	CIVIL NO. B-74-178
BOARD OF EDUCATION MEMBERS OF THE TOWNS OF HAMDEN, MERIDEN, STRATFORD, BRIDGEPORT, BLOOMFIELD, AND WESTPORT, ET AL	:	

JUDGMENT

This case having come on for consideration on Motions for Summary Judgment filed by the plaintiffs, the defendant CEA affiliates and the members of the Board of Education of the Town of Stratford, and the Court having issued its Ruling on Motions for Summary Judgment under date of July 2; 1975, denying the plaintiffs' Motion for Summary Judgment; granting the defendant CEA affiliates' Motion for Summary Judgment and granting the Motion for Summary Judgment of the members of the Stratford Board of Education,

It is accordingly ORDERED, ADJUDGED and DECREED that plaintiffs' Motion for Summary Judgment is denied; defendant CEA affiliates' Motion for Summary Judgment is granted; the Motion for Summary Judgment of the members of the Stratford Board of Education is also granted.

Dated at Bridgeport, Connecticut, this 7th day of July, 1975.

Sylvester A. Markowski, Clerk

By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

Copies to Wofsey, R, K & K
(Attention: Emanuel Margolis, Esq.)

NO. 14 75 56

NORWALK FEDERATION OF TEACHERS	:	SUPERIOR COURT
VS.	:	
NORWALK TEACHERS ASSOCIATION	:	FAIRFIELD COUNTY
and		
NORWALK BOARD OF EDUCATION	:	MARCH 5, 1973

Counsel:

Wofsey, Rosen, Kweskin & Kuriansky, of Stamford, by Emanuel Margolis, for the Plaintiff.

Baker & Diamond, of Stamford, by Bertram Diamond, for the Defendant Norwalk Teachers Association.

Arthur Goldblatt, Corporation Counsel of Norwalk, for the defendant Norwalk Board of Education

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MEMORANDUM OF DECISION

The trial of the within action was had to the court over a span of six non-consecutive days commencing November 14 and ending December 1, 1972. Thereafter extensive initial and reply briefs were filed by counsel. The parties to the action are three in number. The action is one in which the plaintiff is seeking injunctive relief and damages against the two defendants.

The plaintiff is the Norwalk Federation of Teachers, a voluntary non-profit organization of certificated professional employees who are teachers in the public school system of the city of Norwalk, affiliated with the American Federation of Teachers, A. F. L. - C. I. O., which brings this action on behalf

of itself and its members.

The defendant Norwalk Teachers Association is a non-stock membership corporation of certificated professional employees who are also teachers in the public school system of the city of Norwalk and the recognized bargaining agent for teachers in the Norwalk school system under the Teacher Negotiation Act of Connecticut, § § 10-153a - 10-153h of the General Statutes.

The defendant Norwalk Board of Education is the duly elected public body in the city of Norwalk charged with the statutory duty to negotiate with respect to teachers' salaries and other conditions of employment under the Teacher Negotiation Act.

Hereinafter, to facilitate references to the parties to this litigation, the plaintiff Norwalk Federation of Teachers may on occasion be designated as NFT, the defendant Norwalk Teachers Association as NTA, and the defendant Norwalk Board of Education as the Board.

The essential subordinate facts will be stated with brevity. Defendant NTA has been in existence and has had contractual relations with the defendant board since 1951 to date. For many years pursuant to contracts and the Board policy incorporated therein, the Board has been deducting from the teachers' salaries membership dues in NTA. ("In labor relations parlance, [this system] 'check-off' is the practice whereby an employer deducts the amount of a union member's dues from his pay, usually on the employee's express authorization, and remits it directly to the union." Rauch v. City of New York, 21 N.Y.2d 599, 603, note).

Plaintiff NFT was formed in the early part of 1967. On or about May 16, 1967, NFT in writing requested the Board to grant its members the privilege of deducting dues from their salaries. Following a delay the request was granted by the Board at a public meeting on April 16, 1968. The granting of the request imposed no burden on the defendant NTA or on the defendant Board. Commencing with the summer or fall of 1970, the defendant NTA remonstrated with the Board over the granting of dues deduction from the salaries of the membership in the plaintiff NFT. The defendant NTA made the issue of exclusive dues deduction one of its demands upon the defendant Board in the context of the bargaining for the 1971- 1973 contract. It was against this background that the "COMPREHENSIVE GROUP CONTRACT between NORWALK BOARD OF EDUCATORS and NORWALK TEACHERS ASSOCIATION" for the period of "September 1, 1971 through August 31, 1973" had its origin and consummation. (Pl's. Ex. A).

The crucial provision in the contract, p. 22, as to this case, is Article XXIV 3. It reads: "No dues deductions will be made for any other teacher organization. The NTA will indemnify and hold the board harmless against any final judgment for damages and court costs (but not attorneys' fees) that may result from application of the preceding sentence."

The hold-harmless clause in the foregoing provision is unique. It was not contained in NTA's original contract proposals (Def. Board's Ex. 1), nor was it recommended earlier by the arbitrators. (Def. NTA's Ex. 2). On the basis of the history of the negotiations between the two defendants over exclusive dues deductions, it is reasonable to conclude that the Board insisted

on, and NTA accepted, the hold-harmless clause because both parties were doubtful of its legality. The issue of exclusive dues check-off was one of those submitted to non-binding arbitration as required by the Teachers Negotiation Act.

The arbitrators, by a two to-one vote, ruled against exclusive dues check-off for NTA, and while this portion of the arbitration award was accepted by the Board, NTA would not and never did agree to it. (Def. NTA Ex. 18).

It perhaps should have been noted earlier that the plaintiff NFT since its founding has competed in three representation elections with NTA. These elections were held in November, 1968, May, 1970, and March, 1971. While NFT was unsuccessful in all three elections, the last in 1971 was close. In that election NTA's margin of victory was but 63 out of a total of 881 votes cast.

So also it should be noted that depriving the plaintiff NFT of dues deductions which its membership had previously enjoyed, is beginning to take its toll on membership in that organization. It is found that dues deductions, when such is denied as it is now being denied to the membership in the plaintiff NFT, acts as a deterrent to membership. It is otherwise when it is allowed by the employer.

Section 10-153a of the General Statutes as now amended (1969, P. A. 811, § 1) being a part of Teacher Negotiation Act, reads: "Members of the teaching profession shall have the right to join or refuse to join any organization for professional or economic improvement free from interference, restraint, coercion or discriminatory practices by any employing board of education or administrative agents or representatives thereof."

The statute (§ 10-153) as already noted, expressly prohibits "discriminatory practices by any employing board of education or administrative agents or representatives thereof." No other statute containing a similar prohibition in a comparable field of endeavor has been called to the court's attention. Obviously, the reason is because there is no such statute with a similar express prohibition concerning "discriminatory practices."

It is clear that the defendant NTA prevailed upon the defendant Board to have included in the current contract by one means or another the provisions of Article XXIV 3 (Pl's. Ex. A) to which reference has been made, including the hold-harmless clause therein as a balm. The verb "discriminate" has been defined "to make a distinction, as in favor of or against a person or thing." The American College Dictionary. The adjective "discriminatory" has been defined as "applying or favoring in treatment; attitudes toward minority groups." Webster's Third New International Dictionary.

Clearly the contract provision in question was designed to invoke a "discriminatory practice" by the defendant board in conjunction with the defendant NTA against the plaintiff NFT, a minority union and its members. Had the plaintiff NFT never previously been accorded dues deductions by the defendant Board, the case might have been resolved differently. But facts must be given their proper prospective, consideration and balance.

The cases cited by the defendants can all be distinguished on their facts and on the statutory law involved in those cases. As already stated, the case at bar is decided on

its own facts, and lack of other facts. As a case, it is unique from every standpoint. No precedent is required in its solution but sound commonsense and reason. The plaintiff NFT is not required, notwithstanding the assertion of its counsel, to rely on the Wisconsin case of Board of School Directors v. Wisconsin Employment Relations Commission, 168 N. W. 2d 92, in order to prevail.

A last comment along this line may be apropos. Counsel for the plaintiff NFT and for the defendant NTA both seem to feel that one part or another of our Supreme Court's cumbersome opinion of 35 pages in the recent case of West Hartford Education Assn. v. DeCourcy, 162 Conn. 566, decides for each of them the case at bar. Such is not the situation although the well written opinion in the case does contain interesting background material.

In the case at bar the constitutional rights of the plaintiff NFA as stated in its brief, both federal and state, have been flagrantly violated by the defendants'. As between both defendants (NTA) it has been the subtle object of coercion and conspiracy. An additional discussion would only delay the time for the filing of this memorandum. Enough time has already elapsed. It is sufficient to say that all of the issues are found for the plaintiff except as to substantial damages. The computing of such would be highly speculative and conjectural. Nominal damages are set in the amount of $25.

Counsel for the plaintiff will submit a decree for the approval and signature of the court in keeping with this decision and the prayers for relief asked in its complaint, including the direction to the defendant Board to reinstate and carry out a dues - check off system on behalf of the plaintiff NFT and its members. Nominal damages allowed are $25 with full taxable

costs to the plaintiff NFT as an incident of the judgment and decree.

FitzGerald
Judge

NO. 04 27 50

GROTON FEDERATION OF CLASSROOM TEACHERS, LOCAL 1372, AFL-CIO, ET AL	)	SUPERIOR COURT
vs.	)	NEW LONDON COUNTY (at Norwich)
GROTON EDUCATION ASSOCIATION, ET AL	)	JUNE 26, 1975

MEMORANDUM OF DECISION

On or about March 15, 1973, the defendants Groton Board of Education (Board) and the Groton Education Association (Association) executed a collective bargaining agreement to become effective September 1, 1973, to run to August 31, 1976 (Pl's Exh. A). In May, 1973 an election was called by the plaintiff, Groton Federation of Classroom Teachers Local 1372, AFL-CIO (Federation) which was won by the Association by a vote of 207 to 127. The Association has approximately 350 members or 70% of the bargaining unit and the Federation approximately 75 members or 15%, the remaining teachers being unaffiliated.

Article XXIII of the agreement provides (Sec. A) that the Board is to deduct from the salaries of the members of the bargaining unit amounts equal to the dues for the Association, the Connecticut Education Association and the National Education Association, and to forward the same to the Association. It further provides (Sec. C) that any teacher who does not desire to have such monies deducted from his salary must notify the

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SUPERIOR COURT
NEW LONDON COUNTY

Superintendent of Schools in writing prior to October 1st of his wish not to have the deductions made. The Association is charged under Section F with having the responsibility to make every reasonable effort to notify in writing by September 20 each professional employee of the provisions of Article XXIII and under Section D no one is required as a condition of continued employment, to agree to a deduction. Nothing is said in the Article in respect to Federation.

The plaintiff Federation and the plaintiff Roger Daniel Santora (Santora), who is an individual certified professional employee of the Board and a dues paying member of the Federation, herein request this court to enjoin the defendants from implementing Article XXIII without the advance written authorization from each individual teacher and further to honor individual written requests for dues deduction from any teacher on behalf of the Federation on an equal and nondiscriminatory basis with members of the Association. They seek a further order enjoining the defendants from further coercing and conspiring to violate the rights of the plaintiffs.

The defendants have filed two special defenses but have abandoned the first. The second is that the plaintiffs failed to utilize the grievance procedure contained in the agreement and therefore have failed to exhaust their administrative remedies.

Section 10-153(a) of the General Statutes states very clearly that members of the teaching profession shall have the

right to join or refuse to join any organization for professional or economical improvement "free from interference, restraint, coercion or discriminatory practices by any employing board of education." In the court's opinion, Article XXIII of plaintiff's [illegible] A, by providing that a teacher must take affirmative action to prevent the Board herein from deducting Association dues from his salary, violates the essential thrust of these statutory provisions. A teacher under this statute should not and can not be placed in such a position. The statute is clear that if he so desires he can join or refuse to join any organization, but the choice is clearly his and the affirmative action necessary is designed to be an should be a positive choice not a negative one. To hold otherwise would condone an interference and restraint on an individual teacher's right to receive his full compensation.

While government can and does require involuntary deductions from an individual's salary or pay (e.g. income tax and social security tax deductions), it is quite another matter to hold that a private organization has an affirmative right to require such a deduction even through the bargaining process without the express consent of the members of the bargaining unit. A union-employer contract cannot set up such a procedure unless statutory authorization to do so is clear and unequivocal. Interference, restraint, coercion and discrimination can all be subtle in nature yet very effective. The statutory purpose is to prevent even the slightest inroad in these respects. The teaching profession in Connecticut is treated somewhat uniquely (see § 7-467, G. S.; West Hartford Education Association, Inc. v. DeCourcy, 162 Conn. 566, 579):

necessarily so considering the importance our society places on the freedom of the individual and upon the teaching profession to impart diverse viewpoints to students.

The grievance procedure set forth in Article XXIV of this agreement is clearly an inadequate remedy for either of these plaintiffs. Section F.4(b) provides that the Association, if the Professional Rights and Responsibilities Committee formally determines that the grievance is meritorious and recommends such action, submit the same to arbitration. The Professional Rights and Responsibilities Committee under Section G.2 is a professional rights and responsibilities committee maintained by the Association. Obviously, therefore, the Association retains control over what is and is not to be submitted to arbitration. In addition, the subject matter of this action relates to a subject matter of a collective bargaining agreement not to a contract interpretation, and the defendant board cannot shift to its responsibility in respect to the terms and conditions of the collective bargaining agreement. West Hartford Education Association, Inc. v. DeCourcy, 162 Conn. 566, 588; Norwalk Teachers Association v. Board of Education, 138 Conn. 269, 280.

A permanent injunction is hereby issued against these defendants from implementing the provisions of Article XXIII of plaintiff's Exh. A, specifically in respect to the deducting of monies from the salaries of any professional employee of the defendant Board without the advance written authorization from said employee; and as to any monies already collected thereunder, the Board and/or

Association is to notify by August 19, 1975 each employee who has had such withheld that nothing will be done by the Board and/or Association in respect to the same until written authorization from such employee is received detailing what such employee wants done with such monies. If the Board and/or Association receives no reply from any such employee by September 9, 1975, such monies are to be returned directly to such employee.

Curtis J.

Proof of Service

In accordance with Rule 26(d) Fed. Rules App. Proc., I hereby certify that service of the foregoing Joint Appendix has been made on the 24th day of December, 1975 by depositing two copies thereof in the U.S. mail, first class postage paid, to each of the following:

Stephen R. Reitman, Esq., Asst. Town Attorney, Town of Bloomfield, 820 Park Avenue, Bloomfield, Connecticut· Richard Oburchay, Esq., City Attorney's Office, 202 State Street, Bridgeport, Conn. 06604; Gerald H. Cohen, Esq., Town Attorney, Memorial Town Hall, Hamden, Conn. 06518; Anthony P. Copertino, Jr., Esq., 1187 Park Avenue, Bridgeport, Conn. 06604; Charles S. Weidman, Esq., and Stanley P. Atwood, Esq., Asst. Town Attorneys, 101 East State Street, Westport, Conn. and Martin A. Gould, Esq., Gould, Killian & Krechevsky, 37 Lewis Street, Hartford, Conn. 06103.

Dated at Hartford, Conn., this 30th day of December, 1975.

Karl Fleischmann